

AMENDED IN SENATE JULY 15, 2003

AMENDED IN SENATE JULY 3, 2003

AMENDED IN SENATE JUNE 19, 2003

AMENDED IN ASSEMBLY APRIL 30, 2003

AMENDED IN ASSEMBLY APRIL 21, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 1688

**Introduced by Assembly Member Goldberg
(Coauthors: Assembly Members Koretz and Montanez)**

February 21, 2003

An act to add and repeal Part 8.5 (commencing with Section 2050) to Division 2 of the Labor Code, relating to car washes.

LEGISLATIVE COUNSEL'S DIGEST

AB 1688, as amended, Goldberg. Car washes.

Existing law regulates various aspects of workplace and employee safety and health.

This bill would, until January 1, 2007, regulate the industry of car washing and polishing by providing specific recordkeeping requirements that employers of car washers must implement with regard to car washer wages, hours, and working conditions. The bill would require employers of car washers to register with the Labor Commissioner, pay a specified registration fee, and obtain a specified surety bond. Failure to register pursuant to these provisions would be a misdemeanor punishable by specified penalties, thereby imposing a

state-mandated local program. These penalties and registration fees would be deposited in the Car Wash Worker Fund, which this bill would create, for disbursement by the commissioner, upon appropriation by the Legislature.

The bill would state the intent of the Legislature to require the Labor Commissioner to report on labor law violations and enforcement in the car washing and polishing industry.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) California is home to hundreds of full-time car washes that
- 4 employ tens of thousands of car wash workers.
- 5 (b) The work performed by car wash employees is laborious,
- 6 fast-paced, and potentially hazardous.
- 7 (c) Car wash employees work long hours and may service
- 8 hundreds of vehicles on any given workday.
- 9 (d) According to various legal advocates, the car wash industry
- 10 is plagued with labor law violations, including minimum wage,
- 11 overtime, and rest and meal period violations.
- 12 (e) Some car wash employees, commonly known as
- 13 “propineros,” are not paid a wage by their employers and receive
- 14 only the tips given by customers.
- 15 (f) Some other car wash employees are paid below the
- 16 minimum wage and not paid at an overtime rate for overtime hours
- 17 worked.
- 18 (g) A number of car wash employees have been harassed,
- 19 intimidated, and mistreated by their employers because of their
- 20 immigration status.



1 (h) As a result of low wages and widespread labor law
2 violations, some car wash employees are forced to work in
3 substandard working conditions.

4 (i) Existing labor laws and enforcement efforts have failed to
5 remedy these problems.

6 (j) Therefore, it is the intent of the Legislature, in enacting this
7 act, to establish a system of registration, bonding requirements,
8 and enforcement to impose prompt and effective criminal and civil
9 sanctions for the violation of the provisions set forth in this act or
10 any provision of law applicable to the employment of workers in
11 the car washing and polishing industry.

12 SEC. 2. Part 8.5 (commencing with Section 2050) is added to
13 Division 2 of the Labor Code, to read:

14
15 PART 8.5. CAR WASHES

16
17 CHAPTER 1. GENERAL PROVISIONS

18
19 2050. The enactment of this part is an exercise of the police
20 power of the State of California for the protection for the public
21 welfare, prosperity, health, safety, and peace of its people. The
22 civil penalties provided by this chapter are in addition to any other
23 penalty provided by law.

24 2051. As used in this part:

25 (a) “Car washing and polishing” means washing, cleaning,
26 drying, polishing, detailing, servicing, or otherwise providing
27 cosmetic care to vehicles. “Car washing and polishing” does not
28 include motor vehicle repair, as defined in Section 9880.1 of the
29 Business and Professions Code.

30 (b) (1) “Employer” means any individual, partnership,
31 corporation, limited liability company, joint venture, or
32 association engaged in the business of car washing and polishing
33 that engages any other individual in providing those services.

34 (2) “Employer” does not include any charitable, youth,
35 service, veteran, or sports group, club, or association that conducts
36 car washing and polishing on an intermittent basis to raise funds
37 for charitable, education, or religious purposes. “Employer” does
38 not include any licensed vehicle dealer, car rental agency, or
39 automotive repair business that conducts car washing and
40 polishing ancillary to its primary business of selling, leasing, or

1 servicing vehicles. “Employer” does not include any self-service
2 car wash or automated car wash that has no more than the
3 equivalent of two full-time employees for cashiering or
4 maintenance purposes only.

5 (c) “Employee” means any person, including an alien or
6 minor, who renders actual car washing and polishing services in
7 any business for an employer, whether for tips or for wages, and
8 whether wages are calculated by time, piece, task, commission, or
9 other method of calculation, and whether the services are rendered
10 on a commission, concessionaire, or other basis.

11 (d) “Commissioner” means the Labor Commissioner.

12 2052. Every employer shall keep accurate records for three
13 years, showing all of the following:

14 (a) The names and addresses of all employees engaged in
15 rendering actual services for any business of the employer.

16 (b) The hours worked daily by each employee, including the
17 times the employee begins and ends each work period.

18 (c) All gratuities received daily by the employer, whether
19 received directly from the employee or indirectly by deduction
20 from the wages of the employee or otherwise.

21 (d) The wage and wage rate paid each payroll period.

22 (e) The age of all minor employees.

23 (f) Any other conditions of employment.

24 2053. The Division of Labor Standards and Enforcement
25 shall enforce this chapter. The commissioner shall adopt all
26 regulations and rules necessary to carry out the provisions of this
27 chapter.

28 CHAPTER 2. REGISTRATION

29
30
31 2054. Every employer shall register with the commissioner
32 annually.

33 2055. The commissioner may not permit any employer to
34 register, nor may the commissioner permit any employer to renew
35 registration until all of the following conditions are satisfied:

36 (a) The employer has applied for registration to the
37 commissioner by presenting proof of compliance with the local
38 government’s business licensing or regional regulatory
39 requirements.

1 (b) The employer has obtained a surety bond issued by a surety
2 company admitted to do business in this state. The principal sum
3 of the bond shall be not less than ten thousand dollars (\$10,000).
4 The employer shall file a copy of the bond with the commissioner.

5 (1) The bond required by this section shall be in favor of, and
6 payable to the people of the State of California and shall be for the
7 benefit of any employee damaged by his or her employer's failure
8 to pay wages, interest on wages, or fringe benefits, or damaged by
9 violation of Section 351 or 353.

10 (2) Thirty days prior to the cancellation or termination of any
11 surety bond required by this section, the surety shall send written
12 notice to both the employer and the commissioner, identifying the
13 bond and the date of the cancellation or termination.

14 (3) An employer may not conduct any business until the
15 employer obtains a new surety bond and files a copy of it with the
16 commissioner.

17 (c) The employer has documented that a current workers'
18 compensation insurance policy is in effect for the employees.

19 (d) The employer has paid a registration fee to the
20 commissioner in the amount of one hundred fifty dollars (\$150)
21 plus an additional seventy-five dollars (\$75) for each branch
22 location maintained in this state by the employer.

23 2056. When a certificate of registration is originally issued or
24 renewed under this chapter, the commissioner shall provide
25 related and supplemental information to the registrant regarding
26 business administration and applicable labor laws.

27 2057. Proof of registration shall be by an official Division of
28 Labor Standards Enforcement registration form. Each employer
29 shall post the registration form where it may be read by the
30 employees during the workday.

31 2058. At least 30 days prior to the expiration of each
32 registrant's registration, the commissioner shall mail a renewal
33 notice to the last known address of the registrant. However,
34 omission of the commissioner to provide the renewal notice in
35 accordance with this subdivision may not excuse a registrant from
36 making timely application for renewal of registration, may not be
37 a defense in any action or proceeding involving failure to renew
38 registration, and may not subject the commissioner to any legal
39 liability.

1 2059. The commissioner shall require that, as a condition of
2 continued registration, the following employers shall maintain a
3 bond issued by a surety company admitted to business in this state:

4 (a) A twenty thousand dollar (\$20,000) wage bond is required
5 if an employer has violated any federal or state labor law
6 governing the minimum wage and overtime, child labor,
7 occupational safety and health, or worker's compensation or has
8 been subject to a final judgment for failure to pay wages due his
9 or her car wash employees.

10 (b) A twenty-five thousand dollar (\$25,000) wage bond is
11 required if an employer has failed to register with the
12 commissioner pursuant to Section 2055 committed multiple
13 violations of federal or state labor laws governing the minimum
14 wage and overtime, child labor, occupational safety and health, or
15 worker's compensation or has been subject to more than one final
16 judgment for unpaid wages in a three-year period. "Multiple
17 violations" as used in this subdivision, means one or more
18 violations occurring during three consecutive years or three or
19 more violations in a three-year period.

20 (c) The bond required by this section shall be in favor of, and
21 payable to the people of the State of California, and shall be for the
22 benefit of any employee damaged by his or her employer's failure
23 to pay wages, interest on wages, or fringe benefits, or damaged by
24 violation of Section 351 or 353.

25 2060. No employer may conduct any business without
26 complying with the registration and bond requirements of this
27 chapter.

28 2061. The commissioner may not renew the registration of
29 any employer until all of the following conditions are satisfied:

30 (a) The employer has executed a written application, in a form
31 prescribed by the commissioner, subscribed, and sworn by the
32 employer containing the following:

33 (1) A statement by the employer of all facts concerning the
34 form of ownership.

35 (2) If the applicant is a corporation, the corporate name, the
36 names, residential addresses, and telephone numbers of all the
37 officers of the corporation, the names of all persons exercising
38 management responsibility in the applicant's office, and the names
39 and addresses of all persons having a financial interest of 10

1 percent or more in the business, and the percentage of financial
2 interest owned by each of those persons.

3 (3) If the applicant employer is other than a corporation, the
4 names and addresses of all persons except bona fide employees on
5 regular salaries, who are financially interested, either as partners,
6 associates, or profit sharers, in the employer's car wash business
7 together with the amount of their respective interests.

8 ~~(b) The commissioner, after investigation, is satisfied as to the~~
9 2062. The commissioner may not register or renew the
10 registration of an employer in any of the following circumstances:

11 (a) The employer has not fully satisfied any final judgment for
12 unpaid wages due to an employee or former employee of a
13 business for which the employer is required to register under this
14 chapter.

15 (b) The employer has failed to remit the proper amount of
16 contributions required by the Unemployment Insurance Code or
17 the Employment Development Department had made an
18 assessment for those unpaid contributions against the employer
19 that has become final and the employer has not fully paid the
20 amount of delinquency for those unpaid contributions.

21 (c) The employer has failed to remit the amount of Social
22 Security and Medicare tax contributions required by the Federal
23 Insurance Contributions Act (FICA) to the Internal Revenue
24 Service and the employer has not fully paid the amount or
25 delinquency for those unpaid contributions.

26 2063. An employer who fails to register pursuant to Section
27 2054 is guilty of a misdemeanor punishable by a fine of not more
28 than one hundred dollars (\$100) for each calendar day the
29 employer conducts car washing and polishing while unregistered.

30 2064. (a) The Car Wash Worker Fund is established in the
31 State Treasury. Seventy-five dollars (\$75) of each registrant's
32 annual registration fee, required pursuant to subdivision (d) of
33 Section 2055, shall be deposited in this fund. In addition, fines
34 collected pursuant to Section 2063 shall be deposited into the fund.
35 Moneys from the fund shall be disbursed, upon appropriation by
36 the Legislature, by the commissioner only to persons determined
37 by the commissioner to have been damaged by the failure to pay
38 wages and penalties and other related damages by any car wash or
39 polishing employer, to ensure the payment of wages and penalties

1 and other related damages. Any disbursed funds subsequently
2 recovered by the commissioner shall be returned to the fund.

3 (b) Upon appropriation by the Legislature, fifty percent of the
4 remainder of the registrant's annual registration fee not deposited
5 into the fund pursuant to subdivision (d) of Section 2055 shall be
6 applied to costs incurred by the commissioner in administering the
7 provisions of this section and enforcement and investigation of the
8 car washing and polishing industry. *Any funds not used for*
9 *administrative purposes shall be used for enforcement purposes.*
10 Upon appropriation by the Legislature, the other 50 percent of
11 those funds shall be dedicated to create one or more positions to
12 enforce labor law violations *exclusively* in the car wash industry.
13 Any registration funds not used to fund enforcement positions
14 shall be refunded to registered car washes in pro rata share.

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16 CHAPTER 3. SUCCESSORSHIP
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18 2065. A successor to any employer that is engaged in car
19 washing and polishing that owed wages and penalties to the
20 predecessor's former employee or employees is liable for those
21 wages and penalties if the successor meets any of the following
22 criteria:

23 (a) Uses substantially the same facilities or workforce to offer
24 substantially the same services as the predecessor employer.

25 (b) Shares in the ownership, management, control of the labor
26 relations, or interrelations of business operations with the
27 predecessor employer.

28 (c) Employs in a managerial capacity any person who directly
29 or indirectly controlled the wages, hours, or working conditions of
30 the affected employees of the predecessor employer.

31 (d) Is an immediate family member of any owner, partner,
32 officer, or director of the predecessor employer of any person who
33 had a financial interest in the predecessor employer.

34
35 CHAPTER 4. OPERATION
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37 2066. This part shall remain in effect only until January 1,
38 2007, and as of that date is repealed, unless a later enacted statute,
39 that is enacted before January 1, 2007, deletes or extends that date.

SEC. 3. It is the intent of the Legislature to instruct the Labor Commissioner, prior to January 1, 2007, to study and report to the Legislature on the status of labor law violations and enforcement in the car washing and polishing industry.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

CORRECTIONS

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